

SECRETARY OF STATE[721]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State amends Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

These amendments are necessary due to policy changes made to Iowa's election laws by 2010 Iowa Acts, Senate File 2196, effective July 1, 2010. In addition, these amendments make several small technical updates to the rules, including correction of Iowa Code citations.

Pursuant to Iowa Code section 17A.4(3), the Secretary of State finds that notice and public participation are unnecessary because these amendments are required due to changes in the law effective July 1, 2010.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Secretary of State further finds that the normal effective date of these amendments, 35 days after publication, should be waived and these amendments made effective July 1, 2010. The normal effective date should be waived because the changes made to the Iowa Code sections amended by 2010 Iowa Acts, Senate File 2196, and implemented by the rules amended herein are effective July 1, 2010. These amendments confer a benefit upon the voting public by conforming the rules in Chapter 21 to 2010 Iowa Acts, Senate File 2196.

These amendments are also published herein under Notice of Intended Action as **ARC 8780B** to allow for public comment.

These amendments are intended to implement Iowa Code chapters 49 and 53 as amended by 2010 Iowa Acts, Senate File 2196, and chapter 99F.

These amendments will become effective July 1, 2010.

The following amendments are adopted.

ITEM 1. Rescind and reserve rule **721—21.6(43,50)**.

ITEM 2. Adopt the following new rule 721—21.305(53):

721—21.305(53) Confirming commissioner's receipt of an absentee ballot on election day. If a voter's name is on the absentee list prepared pursuant to Iowa Code sections 49.72 and 53.19 as amended by 2010 Iowa Acts, Senate File 2196, and the voter appears at the polling place to vote on election day, the precinct election officials may contact the commissioner's office to confirm whether the commissioner has received the voter's absentee ballot. If the precinct election officials are able to confirm either that the commissioner has not received the voter's absentee ballot or that the voter's absentee ballot has been received but cannot be counted due to a defective or incomplete affidavit, the precinct election officials shall permit the voter to cast a regular ballot at the polling place.

After confirming that a voter's absentee ballot has not been received or that a voter's absentee ballot has been received but cannot be counted due to a defective or incomplete affidavit, the commissioner shall mark the voter's absentee ballot as "Void" in the statewide voter registration system. The commissioner shall enter "Voted at polls" in the comment box that appears when the ballot is marked as "Void."

If a voter's absentee ballot is returned to the commissioner's office after being marked as "Void" pursuant to this rule, the absentee ballot shall be rejected by the absentee and special voters precinct board pursuant to Iowa Code section 53.25 because the voter cast a ballot in person at the polling place.

This rule is intended to implement Iowa Code sections 49.72, 49.81 and 53.19 as amended by 2010 Iowa Acts, Senate File 2196.

ITEM 3. Amend subrule 21.351(3) as follows:

21.351(3) Secure area. The commissioner shall deliver the ballots to a secure area where returned absentee ballots will be reviewed for ~~deficiencies~~ completeness and defects.

ITEM 4. Amend subrule 21.352(2) as follows:

21.352(2) Affidavit envelopes reviewed. The affidavit envelopes of all absentee ballots returned to the commissioner's office shall be reviewed, including those of ballots returned by the bipartisan team

delivering absentee ballots to health care facilities, such as hospitals and nursing homes. If a reviewer finds ~~deficiencies in that any~~ absentee affidavits returned from any health care facility are incomplete or defective, the commissioner shall send the bipartisan delivery team back to ~~make any necessary corrections~~ assist voters as needed with completing affidavits or to deliver any replacement ballots.

ITEM 5. Amend subrule 21.354(3) as follows:

21.354(3) *No defects or ~~deficiencies~~ incomplete information.* If the reviewer finds that the requested information on the affidavit is complete and that there are no defects ~~or deficiencies~~ that would cause the absentee and special voters precinct board to reject the ballot, the reviewer shall put the affidavit envelope into a group of envelopes to be retained in the secure storage area with others that require no further attention until they are delivered to the absentee and special voters precinct board.

ITEM 6. Amend subrule 21.354(4) as follows:

21.354(4) *Defective and ~~deficient~~ incomplete affidavits.* The commissioner shall contact the voter if the reviewer finds any of the following flaws in the affidavit or affidavit envelope:

a. The commissioner shall contact the voter immediately if the affidavit envelope is defective. An affidavit envelope is defective if:

- (1) The absentee ballot is not enclosed in the affidavit envelope.
 - (2) The affidavit envelope is not sealed.
 - (3) The affidavit envelope has been opened and resealed.
 - (4) The voter submits a change of address in a new precinct after returning a voted absentee ballot.
- b. The commissioner shall contact the voter within 24 hours if the affidavit is ~~deficient~~ incomplete.

~~A deficient~~ An incomplete affidavit lacks:

- (1) The signature of the voter.
- (2) For primary elections only, political party affiliation.

c. If an affidavit envelope has flaws that are included in both paragraphs “a” and “b,” the commissioner shall follow the process in paragraph “a.”

ITEM 7. Amend subrule 21.354(5) as follows:

21.354(5) *Defective and ~~deficient~~ incomplete affidavits stored separately.* The commissioner shall store the defective and ~~deficient~~ incomplete affidavit envelopes separately from other returned absentee ballot affidavit envelopes.

a. ~~Deficient~~ Incomplete affidavit envelopes requiring voter correction must be available for retrieval when the voter comes to make corrections.

b. Defective affidavit envelopes must be attached to the ~~original application, replacement application and replacement ballot (if any)~~ for review by the absentee and special voters precinct board.

ITEM 8. Amend rule 721—21.355(53) as follows:

721—21.355(53) Notice to voter. When the commissioner finds a ~~deficiency in an~~ incomplete absentee ballot affidavit or finds a defective affidavit envelope, the commissioner shall notify the voter in writing and, if possible, by telephone and by E-mail. The commissioner shall keep a separate checklist for each voter showing the reasons for which the voter was contacted and the methods used to contact the voter.

21.355(1) *Notice to voter—~~deficient~~ incomplete ballot affidavit.* Within 24 hours after receipt of an absentee ballot with a ~~deficient~~ an incomplete affidavit, the commissioner shall send a notice to the voter at the address where the voter is registered to vote, as well as to the address where the ballot was sent, if it is a different address. The notice shall include:

a. ~~Reason for deficiency~~ Explanation of missing required information (lack of signature or, for primary elections only, political party affiliation).

b. The voter’s options for correcting the affidavit as follows:

- (1) Completing the affidavit at the commissioner’s office by 5 p.m. the day before the election;
- (2) ~~Treating the affidavit as defective and completing the process of applying for~~ Requesting a replacement ballot pursuant to Iowa Code section 53.18; or
- (3) ~~Casting a provisional ballot~~ Voting at the polls on election day.

c. Address of commissioner’s office, business hours and contact information.

21.355(2) Notice to voter—defective ballot affidavit. Immediately after determining that an absentee ballot affidavit envelope is defective, the commissioner shall send a notice to the voter at the address where the voter is registered to vote, as well as to the address where the ballot was sent, if it is a different address. The notice shall include the following information:

- a. Reason for defect.
- b. The voter's options for correcting the defect as follows:
 - (1) ~~Applying for~~ Requesting a replacement ballot; or
 - (2) ~~Casting a provisional ballot~~ Voting at the polls on election day.
- c. Process for ~~applying for~~ requesting a replacement ballot.
- d. Address of commissioner's office, business hours and contact information.

21.355(3) Telephone contact. If the voter has provided a telephone number, either on the absentee ballot application or on the voter's registration record, the commissioner shall also attempt to contact the voter by telephone. The commissioner shall keep a written record of the telephone conversation. The written record shall include the following information:

- a. Name of the person making the call.
- b. Date and time of the call.
- c. ~~If a person answered the telephone, the name of that person~~ Whether the person making the call spoke to the voter.

21.355(4) E-mail contact. If the voter has provided an E-mail address, either on the absentee ballot application or on the voter's registration record, the commissioner shall also attempt to contact the voter by E-mail. The E-mail message shall be the same message that was mailed to the voter. A copy of the E-mail message shall be attached to the checklist.

ITEM 9. Amend **721—Chapter 21**, implementation sentence, as follows:

Rules 721—21.351(53) through 721—21.355(53) are intended to implement 2009 Iowa Code Supplement sections section 53.18 ~~and 53.25~~ as amended by ~~2009~~ 2010 Iowa Acts, ~~House File 475~~ Senate File 2196, and section 53.25.

ITEM 10. Amend subrule 21.359(2) as follows:

21.359(2) When the absentee and special voters precinct board convenes to begin processing absentee ballots, the board shall first review voters' affidavits to determine which ballots will be accepted for counting and prepare the notices to those voters whose ballots have been rejected for the reasons set forth in 2009 Iowa Code Supplement section ~~53.34~~ 53.25. Affidavit envelopes containing ballots that are rejected shall be stored in the manner prescribed by Iowa Code section 53.26. The applications submitted for rejected ballots shall be stored in a secure location for the time period required by Iowa Code section ~~50.12~~ 50.19.

ITEM 11. Amend subrule 21.820(5) as follows:

21.820(5) ~~Canvass~~ Abstract of votes. ~~The canvass of votes for a special election regarding excursion boat gambling shall be held on the Monday following the election.~~ A copy of the abstract of votes of the election shall be sent to the state racing and gaming commission.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/2/10.